

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
**ANDREAS PEFANIS on behalf of
themselves and others similarly situated,**

Plaintiff,

INDEX NO: 08 CIV 002(DC)

v.

WESTWAY DINER, INC.

Defendants.
-----X

NOTICE OF MOTION

PLEASE TAKE NOTICE that upon the accompanying Memorandum of Law and annexed materials, Plaintiff will and hereby does move this Court before the Honorable Denise L. Cote, United States District Court, Southern District of New York, 500 Pearl Street, New York, NY 10007, on a date to be determined by the Court or as soon thereafter as counsel may be heard for an order pursuant to Fed. R. Civ. P. 15(a) and 16(b) permitting Plaintiff to file the Second Amended Complaint.

Dated: June 4, 2010
New York, New York

JOSEPH, HERZFELD, HESTER &
KIRSCHENBAUM LLP

/s/ Denise A. Schulman
Denise A. Schulman

D. Maimon Kirschenbaum (DK 2338)
757 Third Avenue, 25th Floor
New York, New York 10017
Tel: 212-688-5640
Fax: 212-688-2548
*Attorneys for Plaintiff, collective members,
and the class*